IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1118 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VANRAJSINH VIRDEVSINH SARVAIYA

Versus

PALITANA NAGARPALICA

Appearance:

1. Special Civil Application No. 1118 of 1991

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Petitioners

MR D DHIRAJLAL VYAS for Respondent No. 1-2

Respondent No.3 served.

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 11/08/2003

ORAL JUDGEMENT

Twelve petitioners in this petition under Article

226 of the Constitution of India, have challenged the order of the Collector, Bhavnagar District, Bhavnagar, respondent No.3 herein, dated 13.2.1991 at Annexure.A to the petition and the order dated 18.2.1991 passed by the President, Palitana Nagar Palika, in pursuance of the order passed by the Collector, terminating the services of the petitioner, at Annexure.E collectively to this petition.

2. It is the petitioners' case that they were working as Watchman, Peon, Junior Clerk, Khalasi, Surveyor, Driver, Gardner, Helper, Naka Clerk, Lineman, Sathi, Carpenter etc. on vacant post with effect from 1.1.1991 and 1.2.1991 in pursuance of the order passed by the President and Chairman of Staff Selection Committee by getting all the benefits which are available to the permanent employees of the Nagar Palika. According to the petitioners, they are all qualified for the posts in question as per rules. All the petitioners were working as daily-rated employees from 1984 onwards. It appears that the President of the Nagar Palika by order at Annexure.D collectively to the petition, gave appointment to the petitioners on the vacant posts they were holding within the set up of the Nagar Palika as approved by the Director of Municipalities. Those orders are passed between 4.1.1991 and 31.1.1991. According to the petitioners, the said appointments were approved by the Staff Selection Committee. It appears that a Member of the Nagar Palika, one Shri Ramibhai Karimbhai Shaikh, challenged the said appointments by way of filing Application dated 4.2.1991 before the Collector, Bhavnagar under Section 258(1) of the Gujarat Municipalities Act. The Collector issued notice dated 13.2.1991 to the Chief Officer and President asking them to remain present before him with relevant documents on 4.3.1991. By the said notice, the Collector granted temporary injunction and restrained the President not to give effect to the orders of appointment issued in favour of twenty employees of the Municipality including the petitioners. In pursuance of the order dated 13.2.1991 passed by the Collector, the President of the Municipality passed the impugned order dated 18.2.1991 terminating the services of the petitioners and the said order is under challenge in this petition.

3. Learned Counsel Mr.Prabhakar Upadhyay appearing for the petitioners contends that the impugned decision taken by the Collector is against the principles of natural justice inasmuch as the said decision is taken without hearing the petitioners. In the submission of the learned Counsel, the petitioners were never informed by

the Nagar Palika in respect of the proceedings initiated by the Collector. Learned Counsel submits that the Collector could not have taken the impugned decision without hearing the petitioners. To make good his submission, he has relied upon a decision of this Court rendered in the case of R.C.Gajjar and anr. v. State of Gujarat and ors., reported in 1996 (1) GLH 276.

4. When this petition came up for admission, this Court, on 21.2.1991 issued Rule and granted ad-interim relief as prayed for in para 9(C) and (D) of the petition till 11.3.1991. Notice as to interim relief was made returnable on 11.3.1991. Paras 9(C) and (D) are reproduced as under:

"9(C) During the pendency of the present petition, kindly restrain the Respondents Nos.1 and 2 from terminating the services of all the petitioners as per order dtd. 18.2.91 by way of interim order in the interest of justice.

(D) During the pendency of the petition, kindly stay the operation and execution of order of Collector, Bhavnagar dtd.13.2.91 by way of interim order."

On 16.7.1991, this Court (Coram: B.S.Kapadia, J. as he then was) passed the following order:

"Mr.D.D.Vyas, ld.Adv. for the Palitana Nagar Palika and the Chief Officer of Palitana Nagar Palika makes a statement that order dt.18.2.91 passed against the present petitioners will be withdrawn immediately and the order terminating services of the petitioners will not be implemented. In view of the said statement, matter is kept tomorrow, i.e. 17.7.91."

On 17.7.1991, the following order was passed:

"Heard. In view of the statement made by Mr.D.D.Vyas, ld.Adv. for the Municipality, relief 9(C) of the petition would not operate as the order of termination of service is withdrawn. So far as the relief 9(D) is concerned, Mr.Vyas, ld.Adv. for the Municipality states that they would not take any action pursuant to the order dt.13.2.91 passed by the Collector. Accordingly, prayer 9(D) stands modified to the aforesaid extent. Interim relief is made absolute with the above modification."

5. In view of the above position, the legality and propriety of the impugned decision dated 13.2.1991 taken by the Collector is required to be considered.

6. Mr.K.A.Patel, Collector, Bhavnagar District has filed the affidavit-in-reply to this petition. I have gone through the said affidavit and it is clear that nowhere in the said affidavit it is stated that the petitioners are adversely affected by the impugned decision who were heard by the Collector. In para 5 of the petition, the petitioners have specifically averred that no opportunity was given by the Collector before passing the order dated 13.2.1991 and all the petitioners are working on vacant posts as per the order dated 7.2.1991 continuously without any break in service.

In para 9 of the affidavit-in-reply, the Collector has replied to para 5 of the petition as under:

> "(9) So far as para 5 of memo of petition is concerned, I say and submit that order dtd.13.2.91 passed by the present respondent is legal, just and valid and therefore same is required to be confirmed by this Hon'ble Court. I say and submit that affected persons could have been joined as party to the proceedings, but they have not joined as a party in the present case."

It is, admittedly, the petitioners who are the persons having been not joined in the proceedings initiated by the Collector under Section 258(1) of the Act.

7. This Court, in the case of R.C.Gajjar (supra), in an identical situation, after relying upon the decision rendered in the case of H.H.Parmar v. Collector, Rajkot [20(2) G.L.R. 97], held that if any action is required to be taken by the Collector, in exercise of power under Section 258 of the Act, he has to afford reasonable opportunity of being heard. It is not disputed that the petitioners were appointed and they were in service. It was, therefore, incumbent on the part of the respondent No.2 to afford a reasonable opportunity of being heard if he was of the opinion that the action taken or resolution passed by the respondent-Municipality was contrary to law. It is not even the case of respondent No.2 that any opportunity of being heard was afforded to any of the petitioners. Hence, on this short ground alone, the impugned order requires to be set aside and quashed. In my view, in view of the decision rendered by this Court as above, the point is concluded as respondent No. 3 has

not afforded a reasonable opportunity of being heard to any of the petitioners under the provisions of Section 258 of the Act initiated by the respondents, this petition is required to be allowed only on this ground.

8. In the result, this petition is allowed. The order dated 13.2.1991 passed by respondent No.3 Collector, Bhavnagar District is quashed and set aside. Rule is made absolute, with no order as to costs.

9. I may make it clear that it will be open for respondent No.3 to pass appropriate orders after affording a reasonable opportunity of being heard to the petitioners.

(Kshitij R. Vyas, J.)

Sreeram.